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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ABRAHAM HERRERA-PRUDENTE,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-73979

Agency No. A79-789-062

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges

Abraham Herrera-Prudente, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' summary affirmance of an immigration judge's denial of his application for cancellation of removal. We

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 8 U.S.C. § 1252. We grant the petition and remand for further proceedings.

Herrera-Prudente contends that the immigration judge erred in concluding that he failed to satisfy the continuous physical presence requirement under 8 U.S.C. § 1229b(b)(1)(A). He testified that he left the United States in 1993 and in 1995, and that when he attempted to come back he was arrested by INS officers and allowed to return to Mexico. He answered “yes” to the question, “And those times in 1993 and 1995, instead of being deported, the officers just allowed you to return to Mexico, is that correct?” In his application he described his returns in 1993 and 1995 as “INS voluntary return[s] to Mexico.”

An alien who departs the United States pursuant to an administrative voluntary departure in lieu of deportation or removal proceedings interrupts his physical presence in this country. *Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 972 (9th Cir. 2003) (per curiam). When an alien is simply “turned around at the border” by immigration officials, however, his departure does not interrupt his continuous physical presence. *Tapia v. Gonzales*, 430 F.3d 997, 1002-04 (9th Cir. 2005).

On the record before us, we cannot determine whether Herrera-Prudente received administrative voluntary departure or departed under threat of deportation

or removal. We therefore grant the petition and remand for further proceedings concerning the nature of Herrera-Prudente's contacts with immigration officials in 1993 and 1995. *See Ibarra-Flores v. Gonzales*, No. 04-71554, slip op. 2203, 2213 (9th Cir. Mar. 6, 2006).

PETITION FOR REVIEW GRANTED; REMANDED.